

(4) The Administrator has approved the exemption as specified in paragraph (e) of this section.

(b) For manufacturers of freshly manufactured switch locomotives powered by non-locomotive-specific engines, such freshly manufactured switch locomotives are exempt, provided:

(1) The engines are covered by a certificate of conformity issued under 40 CFR part 89;

(2) More engines are reasonably projected to be sold and used under the certificate for non-locomotive use than for use in locomotives;

(3) The number of such locomotives sold or leased by the locomotive manufacturer within any three-year period, and exempted under this paragraph (b) does not exceed 30; and

(4) The Administrator has approved the exemption as specified in paragraph (e) of this section.

(c)(1) The remanufacture of locomotive engines that have been exempted under this section is exempt without request provided that the remanufacturer remanufactures them to a previously-certified configuration, or to be equivalent to engines that have been previously certified under this part or 40 CFR part 89.

(2) The remanufacture of non-locomotive-specific engines that were used in locomotives prior to January 1, 2000 is exempt from the requirements of this part provided: The remanufacturer remanufactures them to be equivalent to engines that have been previously certified under this part or 40 CFR part 89, or demonstrates that the NO<sub>x</sub> emissions from the remanufactured locomotive engine are at least 40 percent less than its emissions prior to certification; and the Administrator has approved the exemption as specified in paragraph (e) of this section.

(d) Manufacturers and remanufacturers of engines and/or locomotives exempted under this section shall:

(1) Report annually to EPA the number of engines exempted under paragraph (a) of this section;

(2) Report annually to EPA the number of locomotives exempted under paragraph (b) of this section; and

(3) Upon the Administrator's request, provide test data showing the emis-

sions of the engine or locomotive when it is operated at the actual in-use locomotive power points.

(e)(1) Manufacturers and remanufacturers seeking an exemption under this section shall notify the Administrator of such intent at least 90 days prior to selling or placing into service the locomotives or locomotive engines.

(2) The Administrator shall deny a non-locomotive-specific exemption in any case where he/she has evidence that approving such an exemption would be inappropriate because of adverse environmental or economic impacts.

(3) When denying an exemption, the Administrator shall notify the manufacturer or remanufacturer of EPA's decision to deny or consider denying the exemption within 60 days of the manufacturer's or remanufacturer's notification in paragraph (e)(1) of this section.

(4) Unless the Administrator notifies the manufacturer or remanufacturer of EPA's decision to deny or consider denying the exemption within 60 days of the manufacturer's or remanufacturer's notification in paragraph (e)(1) of this section, the exemption shall be considered approved 90 days of the manufacturer's or remanufacturer's notification.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40457, July 13, 2005]

#### § 92.908 National security exemption.

A manufacturer or remanufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

#### § 92.909 Export exemptions.

(a) A new locomotive or locomotive engine intended solely for export, and so labeled or tagged on the outside of any container, the locomotive and on the engine itself, is subject to the provisions of § 92.1103, unless the importing country has new locomotive or new locomotive engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a

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country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new locomotive or locomotive engine intended solely for export, where such locomotive or locomotive engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

### § 92.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 92.905 or § 92.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt locomotives or engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the locomotives or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject locomotive or engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any locomotive or engine. Consequently, the causing or the performing of an act prohibited under § 92.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 92.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

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EFFECTIVE DATE NOTE: At 63 FR 19077, Apr. 16, 1998, § 92.910 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### § 92.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

### § 92.912 Staged-assembly exemption.

You may ask us to provide a temporary exemption to allow you to complete production of your engines at different facilities, as long as you maintain control of the engines until they are in their certified configuration. We may require you to take specific steps to ensure that such engines are in their certified configuration before reaching the ultimate purchaser. You may request an exemption under this section in your application for certification, or in a separate submission.

[70 FR 40457, July 13, 2005]

## Subpart K—Requirements Applicable to Owners and Operators of Locomotives and Locomotive Engines

### § 92.1001 Applicability.

The requirements of this subpart are applicable to railroads and all other owners and operators of locomotives and locomotive engines subject to the provisions of subpart A of this part, except as otherwise specified.

### § 92.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

### § 92.1003 In-use testing program.

(a) *Applicability.* This section applies to all Class I freight railroads, beginning on January 1, 2005.

(b) *Testing requirements.* Each railroad subject to the provisions of this section